

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA**
(Eastern Division)

2017 APR 21 A 11:27

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

EDDIE EUBANKS,

Plaintiff,

v.

WESTERN EXPRESS, INC.;

Defendant.

2:17-CV-245
DEMAND FOR JURY TRIAL

COMPLAINT

COMES NOW the Plaintiff, **EDDIE EUBANKS** and as a basis for the relief hereinafter demanded, says as follows:

PARTIES

1. Plaintiff, **Eddie Eubanks** (hereinafter referred to as “**Eubanks**”) is an individual over the age of majority and at all times relevant to the allegations made in this Complaint was a citizen of Eufaula, Barbour County, Alabama.

2. **Western Express, Incorporated** (hereinafter referred to as “**Western Express**”) is a corporation with its principal place of business in Nashville, Tennessee. For the purposes of 28 U.S.C. §1332(c)(1), **Western Express** is deemed to be a citizen of the State of Tennessee.

JURISDICTION AND VENUE

3. This Court has jurisdiction of this cause pursuant to 28 U.S.C.

§1332(a) because the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and is a dispute between citizens of different states.

4. Venue is proper in the Middle District of Alabama, Eastern Division, pursuant to 28 U.S.C. §1391(a) as a substantial part of the events or omissions giving rise to the Plaintiff's claims occurred in Russell County, Alabama within this district.

GENERAL ALLEGATIONS

5. On or about January 20, 2016, at approximately 8:22 a.m. Plaintiff Eubanks was driving his motor vehicle out of the Piggly Wiggly Parking lot located at 512 13th Street, Phenix City, Alabama, in Russell County.

6. A "bobtail" tractor owned and operated by Defendant Western Express with no trailer was driving at a high rate of speed in the Piggly Wiggly parking lot west from 13th Street.

7. Defendant Western Express' tractor was being operated in a manner so as to cause or allow said tractor to collide with Plaintiff Eubanks' vehicle.

8. After failing to control said tractor, allowing it to collide with Plaintiff Eubanks' vehicle, Defendant Western Express' tractor drove through the Piggly Wiggly parking lot and left the scene of the collision without stopping.

COUNT ONE NEGLIGENCE/WANTONNESS

9. On or about January 20, 2016, Defendant Western Express

negligently, recklessly and/or wantonly failed to control its vehicle allowing it to collide with Plaintiff Eubanks' vehicle.

10. At the time of said collision, a Western Express employee was acting within the line and scope of his employment with Defendant Western Express and Defendant Western Express is liable to Plaintiff Eubanks under a theory of respondeat superior.

11. Plaintiff Eubanks was caused to suffer severe injuries to his neck and back.

12. Plaintiff Eubanks was caused to suffer excruciating pain and emotional distress.

13. Plaintiff Eubanks was caused to incur doctors' bills and other medical expenses in and about an effort to heal and cure his injuries, which made the basis of this lawsuit.

14. Plaintiff Eubanks was caused to suffer severe physical pain, mental anguish, scarring, disfigurement and emotional distress.

15. Plaintiff Eubanks was caused to suffer permanent injury and a probability for future surgeries, future pain and suffering and future lost wages.

16. Plaintiff Eubanks avers all of his injuries and damages were the proximate consequence of the aforesaid negligence, recklessness and/or wantonness of Defendant Western Express.

WHEREFORE, on the basis of the foregoing, Plaintiff Eubanks requests the jury selected to hear this case render a verdict for him and against Defendant Western Express for compensatory damages in an amount that will adequately compensate for the injuries and damages sustained by him, and for exemplary damages in an amount that will adequately reflect the wrongfulness of Defendant Western Express' conduct. Further, Plaintiff Eubanks requests that the Court enter judgment on the jury's verdict and award interest from the date of the judgment and costs.

COUNT TWO
NEGLIGENT ENTRUSTMENT, TRAINING, SUPERVISION,
HIRING, RETENTION AND/OR MAINTENANCE

17. Plaintiff hereby adopts and incorporates as if fully set forth herein paragraphs one (1) through seventeen (16) of this Complaint.

18. On or about January 20, 2016, Defendant Western Express owed a duty to the public, including Plaintiff Eubanks, to exercise reasonable care in allowing their vehicle to be driven by a competent, experienced, licensed and prudent individual on the public streets and highways in the State of Alabama.

19. On or about January 20, 2016, Defendant Western Express owed a duty to the public, including Plaintiff Eubanks, to exercise reasonable care in maintaining their vehicles, including the bobtail tractor driven by its employee, to insure that such vehicles were capable of safe operation while traveling on the

public streets and highways in the State of Alabama.

20. On or about January 20, 2016, Defendant Western Express negligently and/or wantonly entrusted its vehicle to its employee, a driver whose driving competence, experience and prudence was not properly determined and who caused and/or allowed to cause the vehicle he was driving to cause the collision in which Plaintiff Eubanks was injured.

21. On or before the above described date, Defendant Western Express negligently and/or wantonly trained the driver of the subject motor vehicle. As a proximate cause of said negligence/wantonness, Plaintiff Eubanks was injured.

22. On or before the above described date, Defendant Western Express negligently and/or wantonly supervised their driver of the subject motor vehicle. As a proximate cause of said negligence/wantonness, Plaintiff Eubanks was injured.

23. On or before the above described date, Defendant Western Express negligently and/or wantonly hired the driver of the subject motor vehicle. As a proximate cause of said negligence/wantonness, Plaintiff Eubanks was injured.

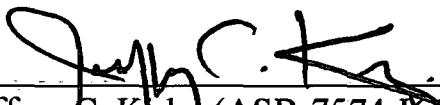
24. On or before the above described date, Defendant Western Express negligently and/or wantonly retained the driver of the subject motor vehicle. As a proximate cause of said negligence/wantonness, Plaintiff Eubanks was injured.

25. On or before the above described date, Defendant Western Express

negligently and/or wantonly maintained the subject motor vehicle which was the cause of the subject accident. As a proximate cause of said negligence/wantonness, Plaintiff Eubanks was injured.

WHEREFORE, on the basis of the foregoing, Plaintiff Eubanks requests the jury selected to hear this case render a verdict for him and against Defendant Western Express for compensatory damages in an amount that will adequately compensate the injuries and damages sustained by him, and for exemplary damages in an amount that will adequately reflect the wrongfulness of Western Express. Further, Plaintiff Eubanks requests that the Court enter judgment on the jury's verdict and award interest from the date of the judgment and costs.

Respectfully submitted,



Jeffrey C. Kirby (ASB-7574-1668)

Of Counsel:

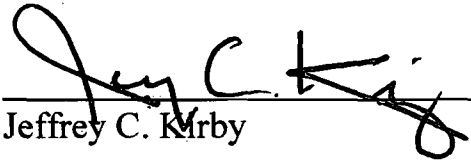
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JURY DEMAND

**PLAINTIFF DEMANDS A TRIAL BY STRUCK JURY ON ALL
ISSUES HEREIN.**



Jeffrey C. Kirby

REQUEST FOR SERVICE BY CERTIFIED MAIL

Plaintiff requests service of the Summons and Complaint on Defendants by certified mail:

Western Express, Inc.
7135 Centennial Place
Nashville, TN 37209

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
Eastern DIVISION

CERTIFICATE OF SERVICE

I, Jeffrey C. Kirby, do hereby Certify that a true and correct copy of the foregoing has been furnished by U. S. Mail (manner of service, i.e., U.S. Mail, electronic mail, etc.) on this 18th day of April 2017, to:

Western Express, Inc.

7135 Centennial Place

Nashville, TN 37209

4/18/2017

Date


Signature